

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.935 OF 2006
IN
CRIMINAL APPEAL NO.812 OF 2006**

Dattatraya Narayan Hegde ...Applicant
vs.
The State of Maharashtra ...Respondent

Mr.Kuldeep Patil for the Applicant
Mr.U.V.Nikam, A.P.P. for State

**CORAM: A.S.OKA,J.
DATE : OCTOBER 7,2006.**

P.C.:

1. Heard learned Advocate for the Applicant. Appeal is admitted for final hearing. The Applicant has been convicted for offence punishable under section 376 of the Indian Penal Code. The substantive sentence is of 7 years.

2. In the examination-in-chief and the cross examination, the prosecutrix has admitted that she was working under the Employment Guarantee Scheme of the State Government when the alleged incident took place. It is an admitted position that benefit of the said scheme is granted only to the adults. The prosecution relied upon only the entry in the school register. The cross examination of the Head Mistress of the concerned school creates a doubt about the genuiness of the date mentioned in the school record. Even going by the birth date disclosed by the prosecutrix, the date on which the F.I.R. is filed, she had certainly completed 16 years. As there is a serious doubt about the case of the prosecution that the age of the prosecutrix was less than 16 years on the date of commission of offence, gross delay in filing the F.I.R.

becomes relevant. The prosecutrix has stated that after it was revealed that she was pregnant, for a period of 7 months, she attempted to persuade the accused to marry with her and she disclosed the alleged offence to her parents only thereafter. After disclosing the incident to the parents, a complaint was filed.

3. The Applicant was working in the Employment Guarantee Scheme. He was on bail through out the trial. There is nothing on record to show that the fine amount has been paid.

4. Criminal Application is disposed of by passing the following order :

- i) The Applicant shall be enlarged on the same bail on which he was enlarged during the pendency of the trial subject to filing fresh bail bonds.
- ii) Bail is granted subject to condition that the Applicant will report to Atpadi Police station, District Sangli once in every month till the final disposal of the Appeal.
- iii) Time of four months is granted to the Applicant to deposit the fine amount of Rs.15,000/-. If the fine amount is not deposited within stipulated period, the Applicant shall surrender and shall undergo the punishment awarded in default of payment of fine.

